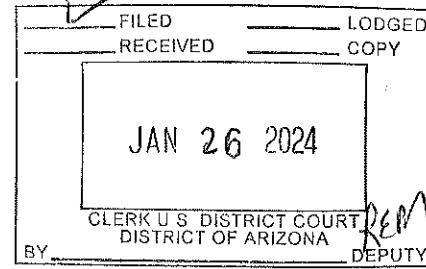


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7 **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA**

8 **IN AND FOR THE COUNTY OF PIMA**

10 Mark William Kelly,

Case No.: CV-24-00001-TUC-JCH(PSOT)

11 Plaintiff,

12 VS

SECOND AMENDED COMPLAINT

13 Pima County Sheriffs Department, Deputy
 14 Gina M. Lumia (Badge #7532), Supervisor
 15 Guy A. Marchal (Badge #5804), and James
 16 Hinkle, Desert Earth Contracting LLC.,
 Richmond American Construction Inc.
 Defendants

17 **COMPLAINT**

18 **JURISDICTION AND VENUE:**

1. This action arises under the laws of the United States and falls within the jurisdiction of this Honorable Court pursuant to 28 U.S. Code § 1331, which grants federal courts original jurisdiction over civil actions arising under the Constitution and laws of the United States.
2. Venue is proper in this district pursuant to 28 U.S. Code § 1331(b)(2), as a substantial part of the events giving rise to the claims occurred in this district and the Defendants reside, can be found, or conduct substantial business within this district.

26 **RELEVANT U.S. CODES PERTAINING TO CIVIL RIGHT VIOLATIONS:**

1. 42 U.S. Code § 1983: Violation of rights under the color of state law.
2. 42 U.S. Code § 1985: Conspiracy to interfere with civil rights.

1 based on these false accusations.

2 2. Despite a lack of evidence supporting the alleged wrongdoing, Plaintiff was forcibly
3 removed from their vehicle, arrested without probable cause, and subjected to excessive
4 force, leading to permanent nerve damage due to the excessively tight application of
5 handcuffs.

6 **Violation of Constitutional Rights:**

7 The Defendants' actions exhibit a flagrant disregard for the bedrock principles enshrined in our
8 Constitution, manifesting in a litany of egregious violations:

9 1. **Fourth Amendment Violation - Unwarranted Search and Seizure:**

10 A transgression of constitutional proportions unfolded as I engaged in peaceful
11 recording from the protective confines of my vehicle on a public easement, resulting in
12 subsequent unwarranted intrusions.

13 2. **Fourth and Fourteenth Amendments Violation - Unlawful Arrest and Excessive Use
14 of Force:**

15 My forcible extraction from the vehicle, coupled with the application of handcuffs
16 tightened to a degree causing sustained physical affliction, constitutes an alarming
17 breach of my constitutional rights.

18 3. **Fourteenth Amendment Violation - Equal Protection Clause Violation:**

19 Acting under the guise of state authority, the Defendants, with wanton disregard,
20 deprived me of the safeguards guaranteed by the 14th Amendment's Equal Protection
21 Clause, subjecting me to unjust and differential treatment bereft of any justifiable
22 foundation.

23 4. **First Amendment Violation - First Amendment Infringement:**

24 Deputies willfully engaged me, unfoundedly accused me of disorderly conduct, and
25 disingenuously asserted an inability to discern the position of my hands, thereby
26 escalating the situation and instilling a genuine fear for my personal safety.

27 5. **Fourth and Fourteenth Amendments Violation - Kidnapping Allegation:**

28 The deputy, without valid cause, explicitly conveyed an intention to confine me,

1 arbitrarily designating me a threat.

2 **6. First and Fourteenth Amendments Violation - Prior Knowledge of Complaints:**

3 Defendants exhibited a clear awareness of my documented grievances against the
4 construction company, evidencing a willful neglect to address longstanding concerns
5 regarding county ordinance violations.

6 **7. First, Fourth, and Fourteenth Amendments Violation - Attempted Coercion and
7 Foreknowledge:**

8 Sergeant Marchal's endeavor to coerce my cooperation in their investigation, followed
9 by my unwarranted removal and arrest, was underscored by his foreknowledge,
10 explicitly expressed in the ominous declaration, "This is going to be a lawsuit." This
11 statement implies a prescient understanding of the impropriety of their actions and the
12 subsequent legal ramifications.

13 **8. Fourth and Fourteenth Amendments Violation - Failure to Follow Misdemeanor
14 Protocol:**

15 Deputy Lumia deviated from established protocol, inexplicably categorizing me as a
16 threat and opting for an unconventional jail transfer for a typical misdemeanor offense.

17 **9. Fourth and Fourteenth Amendments Violation - Forced Search and Seizure at Jail:**

18 The indignant violations persisted at the jail, where I was subjected to further invasive
19 searches, including a forced COVID swab and an unwarranted visual body cavity
20 examination including fingerprinting and intrusive questions about my health.

21 **10. Fourth and Fourteenth Amendments Violation - Unfounded Charges and
22 Subsequent Dismissal:**

23 The baseless nature of the charges, ultimately dismissed, serves as a stark testament to
24 the groundlessness of the arrest and underscores the severity of the infringements on
25 my constitutional rights.

26 These egregious transgressions collectively demand immediate legal redress and corrective
27 measures to rectify the profound injuries inflicted upon my constitutionally protected rights.

28 **Live Streaming Evidence:**

1. Throughout the entire incident, Plaintiff was live-streaming the encounter on the internet,
2. providing real-time evidence of the events.
3. This live stream serves to corroborate Plaintiff's account, substantiating the unwarranted
4. actions and constitutional violations committed by the Defendants.
5. The Plaintiff, Mark William Kelly, a law-abiding citizen, was peacefully recording in a
6. public easement from their vehicle when confronted by Construction Worker James
7. Hinkle without any lawful basis or justification on or about January 18th, 2022.
8. Following the arrest, Plaintiff was subjected to further unlawful treatment at the jail,
9. including strip-searching, fingerprinting, and a forced COVID test, conducted without
10. proper legal grounds. Plaintiff was unjustly held against their will for several hours,
11. leading to false imprisonment.
12. Despite Supervisor Marchal's prior knowledge of Plaintiff's lawful recording activities
13. and the underlying reasons, Defendants subjected Plaintiff to unwarranted arrest,

14 CLAIMS FOR RELIEF:

15. Violation of Fourth Amendment rights against unreasonable search and seizure.
16. Violation of First Amendment rights through retaliation for protected activity.
17. Excessive use of force resulting in injury, violating Plaintiff's civil rights.
18. False imprisonment and unlawful detention without legal basis.
19. Conspiracy to interfere with civil rights.
20. Deprivation of rights under color of law.
21. Violation of the 14th Amendment's Equal Protection and Due Process Clauses.

22 PRAYER FOR RELIEF:

23. Compensatory damages in the amount of \$5,000,000 for physical injury, emotional
24. distress, humiliation, and violation of constitutional rights.
25. Punitive damages against Defendants due to their egregious and willful conduct.
26. Declaratory relief affirming Plaintiff's rights and preventing future violations.
27. Injunctive relief ensuring proper training and oversight within the Sheriffs Department to
28. prevent similar incidents.

1 5. Attorneys' fees and costs incurred in pursuing this action.
2 **JURY DEMAND:**

3 Plaintiff demands a trial by jury on all claims so triable.
4

5 **CONCLUSION:**

6 Wherefore, Plaintiff Mark W. Kelly respectfully requests this Honorable Court to award the relief
7 sought herein and any other relief deemed just and proper by this Court.
8

9 Respectfully Submitted,
10 **Mark William Kelly**



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12

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16

17 **ORIGINAL** of the foregoing filed
18 this 26th day of January 2024 with:

19 Clerk of the Court:
20

21 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA
22

IN THE COUNTY OF PIMA
23

24 **COPY** of the forgoing to be served to:
25 Defendants on or about January 28th, 2024
26
27
28